



Review Hearings

Idaho Code § 16-1622; IJR 45

January 24, 2007

Purpose

- ✓ To review the progress of the case, monitor compliance with the case plan or permanency plan, and to modify the case plan or permanency plan as appropriate. Idaho Code § 16-1622(3); IJR 45.
- ✓ The court may also determine the applicability of the presumption in favor of termination of parental rights found in Idaho Code § 16-1629(9); IJR 45(4).

Best Practice Recommendation:

Open the hearing by explaining the purpose of the hearing in plain language.

When

- ✓ No later than 6 months after entry of the court's order taking jurisdiction under the CPA and every 6 months thereafter. Idaho Code §16-1622(3).

Best Practice Recommendations:

- ✓ Grant continuances only when absolutely necessary, only for a short time, and subject to appropriate orders to ensure that the parties will be ready to proceed on the next court date.
- ✓ Incarceration should not be a basis for continuance – the court can enter a transport order or arrange for the party to appear by phone.

Who Should Be Present

- ✓ Judge
- ✓ Parents whose rights have not been terminated, including putative fathers
- ✓ Child's guardian or other legal custodian, if applicable
- ✓ Assigned caseworker
- ✓ Indian custodian, child's tribe, and tribal attorney

Best Practice Recommendation:

If the child is an Indian Child, consult the ICWA Benchcard

- ✓ County prosecutor or deputy attorney general
- ✓ Guardian ad litem, attorney for GAL, and/or attorney for child
- ✓ Age-appropriate children
- ✓ Foster parents
- ✓ Court reporter or suitable technology, security personnel, and interpreter(s) if applicable

Best Practice Recommendation:

Foster parents are entitled to notice and a right to be heard at the hearing, but they are not parties to the case. 45 CFR 1356.21(o).

Key Issues →

- ✓ If legal custody of the child is vested in IDHW:
 - Is the foster care placement the least disruptive and most-family like setting that meets the needs of the child? (Refer to the Planning Hearing card or the Permanency Hearing – Aggravated Circumstances Card for more information about foster care placement issues.)
 - What services are being provided to the child and/or the foster family, including services to identify and meet any special medical, educational, emotional, physical, or developmental needs the child may have, to assist the child in adjusting to the placement, and/or to ensure the stability of the placement?
 - Do terms of visitation (including parent and SIBLING visitation) or child support need to be established or modified?
- ✓ As to the reunification portion of the case plan:
 - Have the parents complied with the case plan?
 - Do the services set forth in the case plan or the responsibilities of the parents or other participants need to be clarified or modified due to new information or changed circumstances?
 - Should the child's disposition be modified? (For example, from agency custody to at home under agency supervision, to release from supervision and closure of the case, or from at home under agency supervision to agency custody.)
 - Is the agency making reasonable efforts to rehabilitate the family and eliminate the need for placement of the child?
 - Should reunification continue to be a long-term goal for the child?
 - What time frame should be allowed to achieve reunification?
- ✓ As to the concurrent alternative permanency plan in the case plan or to the permanency plan where reunification is no longer a goal:
 - Does the permanency plan need to be changed due to new information or changed circumstances?
 - Is the agency making reasonable efforts to finalize the permanency plan?
 - What time frame should be allowed to achieve the permanent placement of the child?

Practice Note:

There is a rebuttable presumption in favor of termination of parental rights and adoption if a child has been in the custody of IDHW and out of the home for 15 of the last 22 months from the date the child entered foster care. Idaho Code § 16-1629(9). Idaho Code § 16-1622(2) provides that a party may move the court to modify the case plan if the child's best interest is not being served by carrying out the existing plan.





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Practice Notes:

- ✓ **Contrary to the welfare/best interest and reasonable efforts to prevent placement at review hearings:**
 - If the original disposition was to place the child at home under agency supervision and the child is then placed in custody for the first time at a review hearing, federal law requires the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts to prevent placement
 - See the Shelter Care Hearing card regarding these findings.
- ✓ **Extended Home Visits.** Where the family is making substantial progress toward reunification, the degree of intervention in the family should decrease, and the disposition should be modified accordingly. For example, where the disposition is to place the child in the custody of IDHW, and the family is making substantial progress toward reunification, the next step may be an extended home visit, then modification of disposition to placement of the child in the home under agency supervision, and finally, closing the case. The extended home visit is a useful intermediate step, as it provides the parents with the opportunity to implement the skills they should have been developing while the child was in agency custody; if problems arise during the extended home visit, the agency may remove the child from the home without prior court order and the extended home visit (or return to state custody) is not considered an additional placement for purposes of federal regulations. Extended home visits must be approved by the Court prior to the visit pursuant to Idaho Juvenile Rule 42. If an extended home visit exceeds 6 months and has not been authorized by the court or if it exceeds the time established as appropriate in the court's order, it is deemed a new placement and the case-specific, documented findings of contrary to the welfare/best interest and reasonable efforts are required. 45 CFR 1356.21(e).

Best Practice Recommendations:

- ✓ For the review hearing order, use the form Review Hearing Order found on the Idaho Supreme Court's website: <http://www.isc.idaho.gov/childapx.htm> . Include any modifications to the case plan, the permanency plan, or the disposition of the child.
- ✓ Schedule a review hearing every three months, unless there is good reason to wait longer before the next review.
- ✓ Require IDHW and the GAL to prepare and file written reports at least five days prior to the review hearing. The reports should be verified or in the form of an affidavit.
- ✓ Determine whether further efforts are needed to join essential parties.
- ✓ Determine whether further efforts are needed to ascertain whether the child is an Indian child and/or whether further efforts are needed to give notice as required by the Indian Child Welfare Act. 25 USC §§1901, *et seq.* If notice has been given and the tribe did not appear, ensure that there is an affidavit of service in the file, and make appropriate findings in the decree.
- ✓ Determine whether further efforts are needed to identify, locate, and serve missing parent(s), including putative fathers. Idaho Code § 16-1611(3) requires notice to each parent.. If notice has been given and a parent does not appear, ensure that this is documented in the file and make appropriate findings in the decree. Order paternity testing where appropriate to establish parentage.
- ✓ Enter orders as needed to ensure the progress of the case and to prepare for the next hearing.
- ✓ Schedule the next hearing, which will be either a review hearing, a 12-month permanency hearing, or both. (A review hearing and the 12-month permanency hearing can be combined.) Order the assigned caseworker and the GAL to attend. If reunification continues to be the long-term goal, order the parents to attend. For a review hearing, order IDHW to file a written progress report prior to the review hearing. For a 12-month permanency hearing, order IDHW to file a permanency plan prior to the permanency hearing. The court may also require the GAL to file a written report.
- ✓ Enter transport orders to the review hearing for parents or children in state or local custody.
- ✓ Consult the Educational Needs Benchcard and evaluate the child's or youth's educational progress.